

Message Text

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C O N F I D E N T I A L LIMA 2631

E.O. 11652: GDS
TAGS: ELAB, PE
SUBJECT: NEW LABOR STABILITY LAW

SUMMARY: THE GOP MARCH 21, 1978, SIGNED THE LONG-AWAITED DECREE
LAW (NO 22126) ESTABLISHING NEW NORMS TO MAINTAIN "LABOR
STABILITY" AND TO PROMOTE BETTER EMPLOYER-WORKER RELATIONS.
LABOR LAWYERS, BUSINESSMEN, AND VARIOUS LABOR GROUPS ARE
NOW STUDYING THE NEW LAW CAREFULLY. THE DECREE'S REAL
IMPORTANCE WILL ONLY BE REVEALED WHEN IT IS IMPLEMENTED
BY THE MINISTRY OF LABOR'S ADMINISTRATIVE AUTHORITY AND
TESTED IN VARIOUS COURT CASES. HOWEVER, INITIAL REACTIONS
TO THE LAW BOTH FROM BUSINESS AND LABOR HAVE BEEN GENERALLY
NEGATIVE. END SUMMARY.

1. PROBABLY THE MOST IMPORTANT CHANGE IN THE DECREE IS
THE EXTENSION OF A NEW WORKER'S PROBATIONARY PERIOD FROM
3 MONTHS TO 3 YEARS. THE 3-YEAR PROBATIONARY PERIOD APPLIES
TO WORKERS ENTERING POSITIONS AFTER MARCH 21, 1978. LABOR
LEADERS FOCUSED IMMEDIATELY AND CRITICALLY ON THIS LOSS
OF AN IMPORTANT BENEFIT FOR THE WORKER, I.E., THE ENTITLEMENT
TO SEVERAL RIGHTS, INCLUDING SEVERANCE PAY, AFTER 3 MONTHS
EMPLOYMENT. HOWEVER, SOMEWHAT PARADOXICALLY, ONE LABOR
LEADER SUGGESTED THAT THE EXTENDED PROBATIONARY PERIOD MAY
IN FACT CONTRIBUTE TO LABOR STABILITY. CERTAIN BUSINESSES
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(PARTICULARLY DEPARTMENT STORES) HAVE BEEN REGULARLY FIRING
YOUNGER EMPLOYEES EVERY 80 DAYS OR SO TO AVOID INCURRING
THE LEGAL RESPONSIBILITIES CONSEQUENT TO PASSING THE 3 MONTHS'
PROBATIONARY LIMIT. NOW THAT THE 3 MONTH LIMIT HAS BEEN
LIFTED, WORKERS MAY BE MAINTAINED FOR LONGER PERIODS IN THE
INTERESTS OF EFFICIENCY AND MORALE. NONETHELESS, LABOR
REACTIONS TO ALLOWING THE EMPLOYER TO LAY OFF WORKERS DURING

THE FIRST 3 YEARS WITHOUT PROVING A SPECIFIC CAUSE (ALTHOUGH AFTER A FAIRLY COMPLICATED PROCESS) ARE VERY NEGATIVE.

2. THE LIST OF JUSTIFICATIONS FOR FIRING WORKERS HAS BEEN EXPANDED. OBVIOUSLY, THE PRACTICAL SIGNIFICANCE OF THIS CHANGE WILL NOT RPT NOT BE KNOWN UNTIL SEVERAL CASES HAVE BEEN DECIDED. (BUSINESSMEN REPORTEDLY ARE SKEPTICAL THAT THE GOP WILL IN FACT STAND BY ITS OWN LAW AND SUSPECT THAT ANY FIRING WILL REMAIN A DIFFICULT, LENGTHY PROCESS.) HOWEVER, THE LEGAL ADVISOR TO THE APRA-RELATED LABOR CONFEDERATION (CTP), JOSMELL MUNOZ, CONSIDERS THIS EXPANDED LIST OF CAUSES A RETROGRADE STEP AND IN GENERAL THINKS THAT THE LAW EXCESSIVELY FAVORS BUSINESSMEN AND "THE RIGHT." HIS PRELIMINARY ANALYSIS OF THE DECREE LAW SUGGESTS THAT BUSINESSES CAN NOW OVERCOME CERTAIN CLAUSES OF THEIR COLLECTIVE BARGAINING AGREEMENTS BY UNILATERAL IMPOSITION OF NEW WORK RULES. ADDITIONALLY, HE SUSPECTS THAT THE ADMINISTRATIVE AUTHORITY OF THE MINISTRY OF LABOR CAN ALSO OVERRULE OR SUSPEND CERTAIN PORTIONS OF EMPLOYER-WORKER CONTRACTS. FINALLY, THE NEW LAW'S EXPANDED LIST OF CAUSES FOR FIRING SEEMS TO EXTEND INTO THE WORKER'S PRIVATE LIFE. FOR EXAMPLE, THE LAW LISTS VIOLENCE, GRAVE INDISCIPLINE AND REPEATED LACK OF RESPECT FOR EMPLOYERS, THEIR REPRESENTATIVES, SUPERIORS OR COWORKERS AT THE WORK-PLACE OR AWAY FROM IT ONE OF THE CAUSES FOR SEPARATION. MUNOZ THINKS THAT THE INCLUSION OF ACTIONS OR STATEMENTS OUTSIDE OF THE WORKPLACE INVITES EMPLOYERS TO INTIMIDATE

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WORKERS AND INTERFERE IN THEIR PRIVATE LIVES.

3. EMBASSY'S COMMERCIAL ATTACHE DISCUSSED THE NEW LAW WITH ABOUT A DOZEN PERUVIAN BUSINESSMEN WHO WITH ONE EXCEPTION TERMED THE NEW DECREE LAW WORSE THAN THE OLD ONE. IN THESE BUSINESSMEN'S VIEW, THE 3 YEAR VICE 3 MONTH PROBATIONARY PERIOD IS AN IMPROVEMENT. HOWEVER, THEY DOUBTED THAT THIS DECREE WOULD ENCOURAGE NEW OR EXPANDED PRODUCTION OR INCREASE THE NUMBER OF "NEW HIRES." THEY ALSO DOUBT THAT THE 3 YEAR PROBATIONARY PERIOD WILL BE MAINTAINED IN FORCE VERY LONG. BUSINESSMEN ARE ALSO CONCERNED OVER ARTICLES 21 AND 22 OF THE LAW. THE FORMER AUTHORIZES A PRISON SENTENCE OF UP TO 3 YEARS FOR FAILURE TO COMPLY WITH THE LAW, AND THE LATTER MANDATES A MINIMUM 3 YEAR PRISON SENTENCE FOR EMPLOYEES WHO TRY TO JUSTIFY THE CLOSURE OF THEIR BUSINESS BY FRAUDULENT MEANS.

4. COMMENT: IT IS TOO SOON TO TELL WHAT ADVANTAGES OR DISADVANTAGES EITHER TO WORKERS' RIGHTS OR TO BUSINESSMEN'S CONFIDENCE WILL EMERGE FROM THE APPLICATION OF THE LAW. OUR INITIAL APPRAISAL IS THAT THE LAW WAS DESIGNED AS A GUESTURE TOWARDS THE BUSINESS COMMUNITY BUT IT WAS SO "BALANCED"

WITH ARTICLES PREJUDICED TO BUSINESS THAT IT ENDED IN PLEASING
NO ONE.
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